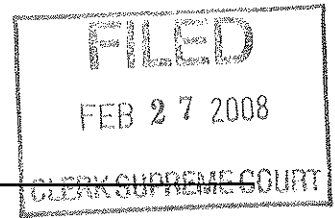


IN THE SUPREME COURT OF IOWA



IN THE MATTER OF THE
CLIENT SECURITY COMMISSION

*
*

2005 - 2007 REPORT

TO THE CHIEF JUSTICE AND JUSTICES OF THE IOWA SUPREME COURT:

This report of the Client Security Commission is submitted as required by Court Rule 39.4 for the reporting period January 1, 2005 through December 31, 2007. The financial reports of the Commission as prepared by Brooks Lodden, P.C. covering the fiscal years ending November 30, 2005, November 30, 2006, and November 30, 2007 previously have been forwarded to the Court. The financial reports include a section entitled *Management Discussion & Analysis*, which was prepared by Commission staff and represents the opinions of Commission management. It is a fairly succinct statement of the major points shown by the audit, and examination of that statement is recommended in lieu of any separate analysis the Commission might otherwise provide regarding financial operations of the Commission.

INTRODUCTION

The Client Security Trust Fund of the Bar of Iowa and the Client Security Commission were activated on January 1, 1974, with \$20,000.00 in funds received as a grant from the Iowa State Bar Foundation. That grant since has been repaid. As of December 1, 2007 the unrestricted balance of the Client Security Trust Fund totaled \$ 458,201.65. On December 1, 2007 the Commission filed a certificate with the Court, stating that the unrestricted fund balance, after discounting all pending claims, totaled less than \$600,000.00. Under the provisions of Court Rule 39.6(4), an additional assessment is payable during 2008 by lawyers who previously have paid assessments totaling \$200.00 or more into the fund.

THE COMMISSION

Members

Chapter 39 of the Iowa Court Rules¹ provides for the Client Security Commission and the Client Security Trust Fund. Rule 39.1 provides for the appointment of seven members to the Commission, two of whom are not to be lawyers. During the period covered by this report the non-lawyer members of the Commission were Jamie Ward of West Des Moines and Sondra Holmstrom of Fort Dodge. The lawyer members of the Commission during the period covered by this report were the Honorable John D. Lloyd of Osceola, the Honorable Martha L. Mertz-LaFollette of Knoxville, Craig R. Foss of Fairfield, Timothy C. Lynch of Decorah, Joel T. Niebaum of Missouri Valley, and Mary A. Weideman of Iowa City.

The term of Judge John D. Lloyd expired on December 31, 2005. Judge Lloyd served as Chairperson of the Commission during his tenure. The term of Joel T. Niebaum expired on December 31, 2007. Mr. Niebaum served as Treasurer and Vice Chairperson of the Commission during his tenure. Their leadership and experience contributed significantly to the efforts of the Commission. At the fall 2007 meeting, Craig R. Foss was elected Chairperson, Timothy Lynch was elected Vice Chairperson, and Jamie Ward was elected Treasurer.

CLAIMS EXPERIENCE

Claims Considered

During 2005 the Commission authorized payment on eight requests for reimbursement totaling \$ 17,089.93. The claims approved for payment during 2005 are summarized as follows:

The Commission authorized payment on six claims in the total amount of \$4,609.00 arising from the actions of David Sheetz. Mr. Sheetz is deceased.

The Commission authorized payment on one claim in the amount of \$ 100.00 because of the actions of Thomas McCann. The Iowa law license of Mr. McCann has been suspended.²

¹ Originally adopted December 5, 1973, effective January 1, 1974 as Iowa Court Rule 121.

² This \$100.00 payment is an additional payment on a claim previously considered and partially reimbursed in a prior year.

The Commission authorized payment on one claim in the amount of \$ 12,380.83 because of the actions of N. Leroy Walters. The Iowa law license of Mr. Walters has been revoked.³

During 2006 the Commission authorized payment on nine requests for reimbursement totaling \$ 51,858.23. The claims approved for payment during 2006 are summarized as follows:

The Commission authorized payment on four claims in the total amount of \$ 2,969.00 arising from the actions of John K. Meyer of West Des Moines. Mr. Meyer is deceased.

The Commission authorized payment on one claim in the amount of \$ 2,500.00 because of the actions of Luis Herrera of Des Moines. The license of Mr. Herrera has been revoked.

The Commission authorized payment on one claim in the amount of \$ 41,953.51 because of the actions of Howard K. Myers of Webster City. The Iowa law license of Mr. Myers has been revoked.

The Commission authorized payment on one claim in the amount of \$ 1,216.72 because of the actions of Mark S. Beckman of Dubuque. The Iowa law license of Mr. Beckman has been revoked.

The Commission authorized payment on one claim in the amount of \$ 440.00 because of the actions of Dennis Bjorklund of Iowa City. The Iowa law license of Mr. Bjorklund has been revoked.

The Commission authorized payment on one claim in the amount of \$ 2,779.00 because of the actions of N. Michael D'Angelo of Oakland. The Iowa law license of Mr. D'Angelo has been revoked.

During 2007, the Commission authorized payment on 101 requests for reimbursement totaling \$ 117,083.72. The claims approved for payment during 2007 are summarized as follows:

The Commission authorized payment on 97 additional claims in the total amount of \$ 109,874.02 because of the actions of Dennis Bjorklund of Iowa City.

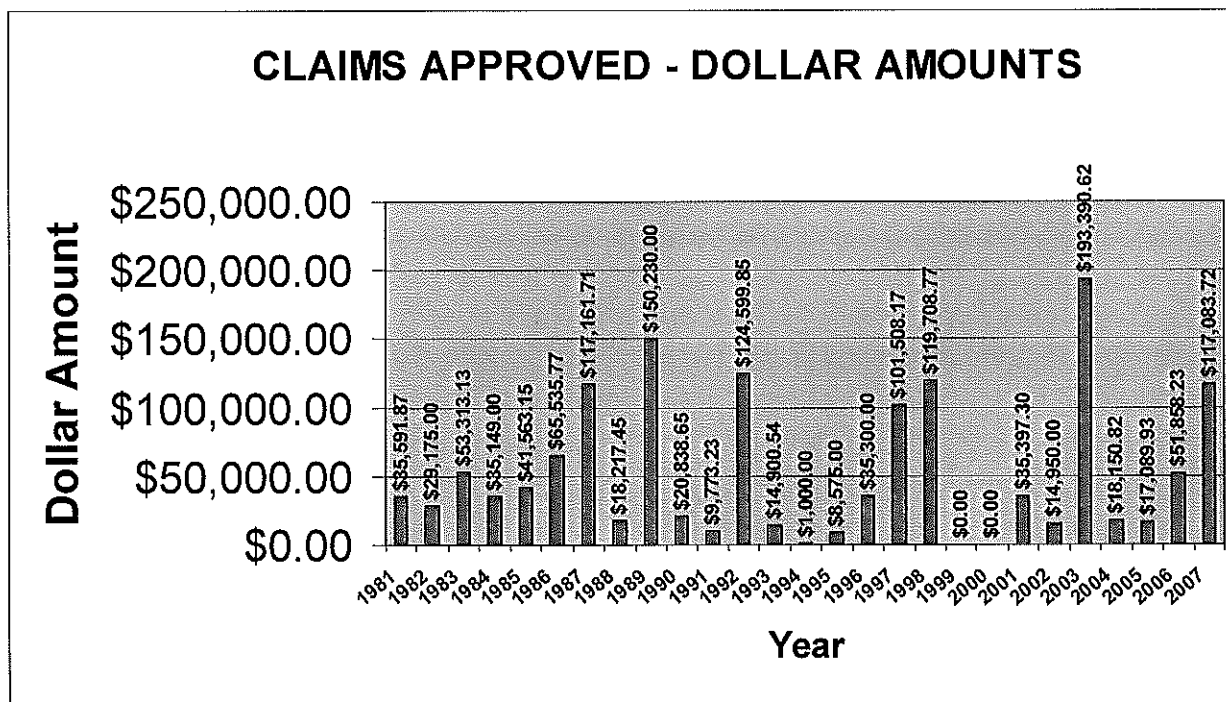
The Commission authorized payment on two additional claims in the total amount of \$1,719.70 because of the actions of John K. Meyer of West Des Moines.

The Commission authorized payment on one claim in the amount of \$1,000.00 because of the actions of Ross Hauser of Cedar Rapids. Mr. Hauser subsequently made full restitution to the Commission.

³ This \$12,380.83 payment is an additional payment on a claim previously considered and partially reimbursed in a prior year.

The Commission authorized payment on one claim in the amount of \$ 4,500.00 because of the actions of Keith G. Thompson of George. The Iowa law license of Mr. Thompson has been suspended.

As shown in the following charts, the total amount of money paid on claims and the number of claims approved by the Commission during 2006, and particularly in 2007, exceed the experience in most prior years.



Sixteen requests for reimbursement were pending before the Commission on January 1, 2005. During calendar year 2005, twenty-one additional requests for reimbursement were filed. The disposition of these pending and new thirty-seven matters by the Commission in 2005 was as follows:

| <u>Disposition</u> | <u>Number</u> |
|------------------------------|---------------|
| Payment authorized and made | 6 |
| Reimbursement denied | 19 |
| Pending on December 31, 2005 | 12 |

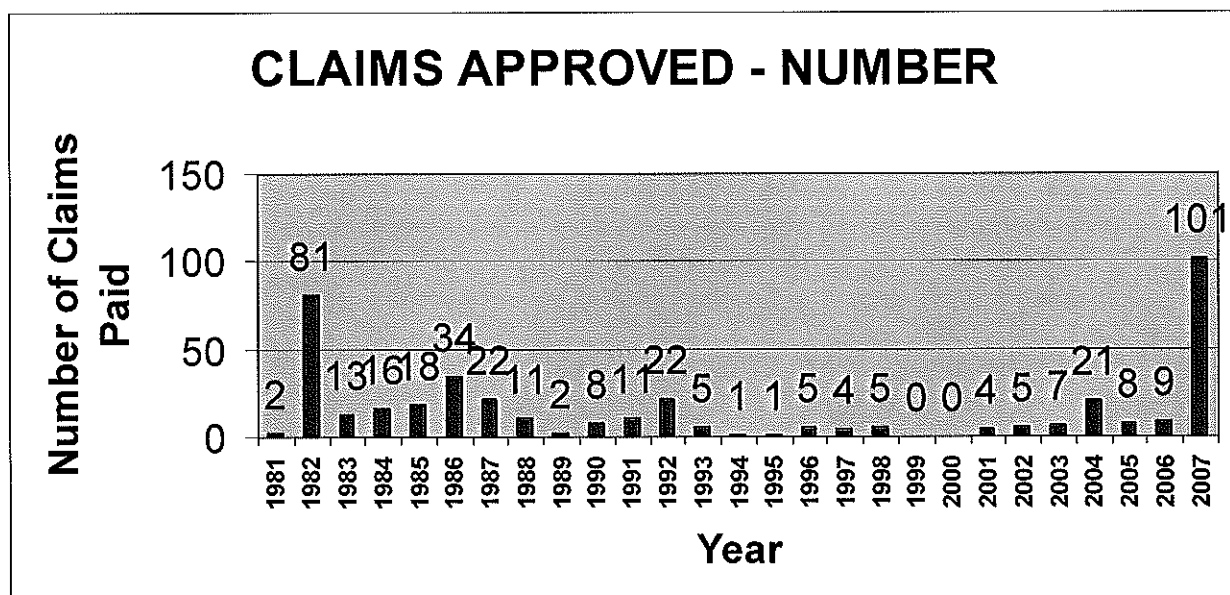
During calendar year 2006, one hundred and twenty-one additional requests for reimbursement were filed. The disposition of these one hundred and thirty-three pending and new matters by the Commission in 2006 was as follows:

| <u>Disposition</u> | <u>Number</u> |
|------------------------------|---------------|
| Payment authorized and made | 9 |
| Reimbursement denied | 18 |
| Pending on December 31, 2006 | 106 |

During calendar year 2007, seventeen requests for reimbursement were filed. The disposition of these pending and new one hundred and twenty-three matters by the Commission during 2007 was as follows:

| <u>Disposition</u> | <u>Number</u> |
|------------------------------|---------------|
| Payment authorized and made | 101 |
| Reimbursement denied | 11 |
| Pending on December 31, 2006 | 11 |

The total sum requested for the claims pending on December 31, 2007, as limited by per claim and per lawyer caps, was \$ 266,730.00.



Substantially all of the claims denied in 2005, 2006, and 2007 failed to qualify for reimbursement because they did not arise from the dishonest conduct of a member of the Bar of the State of Iowa while acting either as an attorney or fiduciary. The Commission is not authorized to approve requests for payment arising out of voluntary joint ventures with lawyers or the personal lending of money to lawyers. Additionally, the Client Security Fund is not intended and is not authorized to provide protection against malpractice or to resolve disputes about the amount of a lawyer's charges.

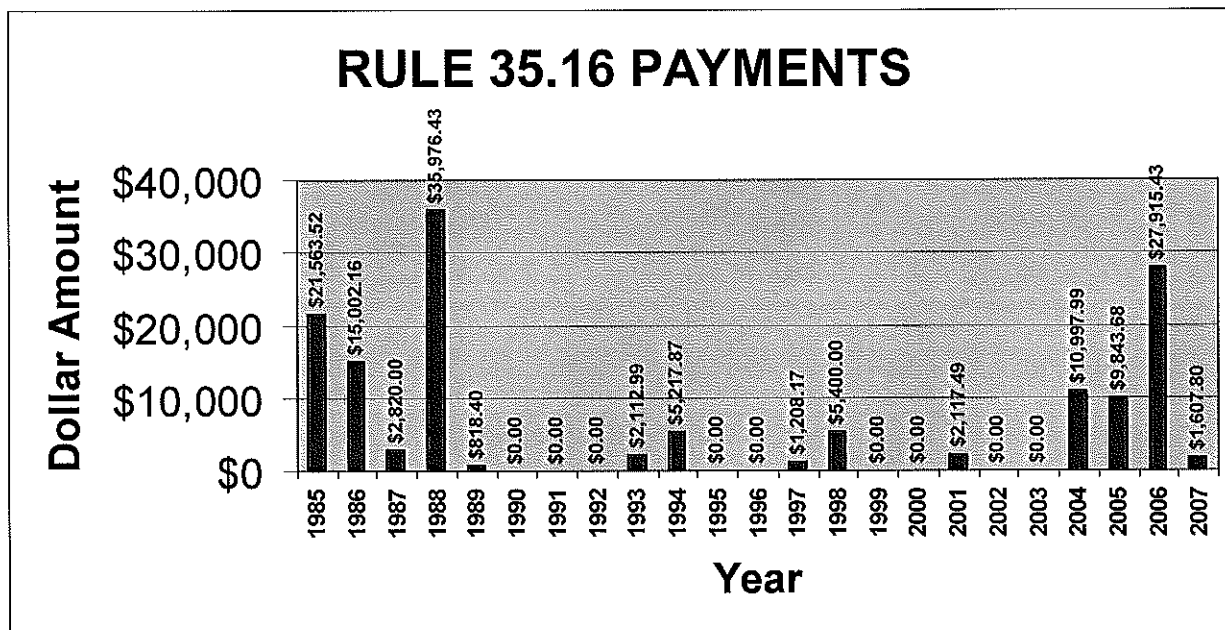
Commission rules, as amended in 1984, provide \$50,000.00 as the maximum reimbursement one claimant may receive from the fund, and \$150,000.00 as the maximum aggregate amount payable from the fund because of the dishonest conduct of any one attorney. The Commission continues to observe the policy, in accordance with the unanimous opinion of its members, that if lawyers embezzle they should be prosecuted to the full extent of the law in the same manner as any other person would be. The responsibility for prosecution in such cases generally remains with authorities in the county of the lawyer's residence, occasionally assisted by the Area Prosecutions office of the Attorney General of Iowa. In accordance with governing regulations, when information is received by the Commission indicating an apparent violation of the criminal laws by a lawyer, such information is reported to the Court for such action as the Court deems appropriate.

Trustee Appointments

Iowa Court Rule 35.16 provides for a disability suspension pursuant to a sworn application on behalf of a county bar association or the Attorney Disciplinary Board, and allows the Chief Judge of the judicial district in which the attorney has been practicing to appoint a lawyer or lawyers to serve as trustee in connection with matters in progress in the office of the lawyer suspended under the rule. Appointment of the trustee to inventory files, sequester client funds and take other appropriate action to protect the interests of the clients and other affected persons,

also operates to identify and assist in the management of claims for reimbursement filed with the Client Security Commission.

Iowa Court Rule 35.16 further provides a trustee may seek reasonable fees and reimbursement of costs in connection with these matters from the suspended attorney, but if unsuccessful, the trustee may submit a claim to the Client Security Commission. The Commission, in the exercise of its sole discretion, determines the merit of the claim and the amount of any payment from the fund. Two trustee claims in the amount of \$ 2,300.00 and \$ 7,543.68 respectively were authorized for payment from the Client Security Trust Fund under Iowa Court Rule 35.16 during 2005. Two trustee claims in the amount of \$8,950.00 and \$18,965.43 respectively were authorized for payment from the Client Security Trust Fund under Iowa Court Rule 35.16 during 2006. One trustee claim in the amount of \$1,607.80 was authorized for payment from the Client Security Trust Fund during 2007. During prior years, payments have been authorized under Iowa Court Rule 35.16 as shown in the following table.



COMPLIANCE

As of December 31, 2007, 13,583 lawyers were licensed to practice law in the State of Iowa. Of that number, 5005 had received certificates of exemption based on the fact that they have now retired, are practicing law in a state other than Iowa, or are not engaged in the practice of law.

A total of 353 lawyers were exempt from payment of assessments into the fund by reason of having been admitted to the Iowa Bar within the past two years or as a result of their active duty military service status. The 8225 lawyers who were not exempt from payment of the assessment to the fund included 1229 government employees; 860 full-time corporate employees; and 266 justices and judges. Each of the lawyers included in the foregoing groups pays assessments of \$25.00 annually into the fund until they have paid assessments totaling \$200.00. The majority of these lawyers previously have paid the full \$200.00 in assessments. A total of 1298 practitioners paid \$25.00 or 1 percent of their net Iowa law practice income as an assessment (whichever was greater) as a result of their classification as part-time practitioners. The 4531 lawyers classified as full-time practitioners also are required to pay annually into the fund until they have paid assessments totaling \$200.00. The majority of full-time practitioners have paid assessments of \$200.00 or more into the Client Security Trust Fund.

During each of the reporting years 2005, 2006, and 2007, notices of delinquency were served upon attorneys who had failed to timely comply with the requirements of Chapter 39 of the Iowa Court Rules. Suspensions were entered by the Court for failure to comply with Chapter 39 of the Iowa Court Rules for twelve lawyers during 2005, five lawyers during 2006, and five lawyers during 2007.

The failure to file the required annual questionnaire and statement with the Commission by March 1st of each year resulted in payment of a \$25.00 late filing penalty under the Commission's

rules by 642 lawyers during 2005, 441 lawyers during 2006, and 807 lawyers during 2007.

ANNUAL FEE TO FINANCE DISCIPLINARY SYSTEM

Chapter 39 of the Iowa Court Rules⁴ was amended by order dated December 15, 1994 and effective January 3, 1995. The amendment provided that in addition to providing indemnification for losses caused to the public by the dishonest conduct of members of the bar of this state, the fund also would support administration of the lawyer disciplinary system and other programs that impact the disciplinary system, including but not limited to the Iowa Lawyer's Assistance Program.

Effective in 1995, as a condition to continuing membership in the bar, every bar member, unless exempt, is required to pay to the Commission an annual fee as determined by the Court to finance the disciplinary system. The annual fee during 2005, 2006 and 2007 was \$125.00. Annual fees and late penalties received to finance the disciplinary system totaled \$ 964,910 during 2005, \$ 983,460 during 2006 and \$ 1,009,845 during 2007. By court order, the fees received to finance the disciplinary system were expended to pay operating expenses of the Iowa Supreme Court Attorney Disciplinary Board, the Grievance Commission of the Supreme Court of Iowa, the Iowa Supreme Court Commission on the Unauthorized Practice of Law, and a portion of the operating expenses of the Iowa Lawyers Assistance Program.

By Court Order, the annual fee to be paid by each attorney to support the attorney disciplinary system for calendar year 2008 was set at \$175.00. The annual fee collected again will be used to pay annual operating expenditures for the Attorney Disciplinary Board, Iowa Lawyers Assistance Program, Grievance Commission and the Commission on the Unauthorized Practice of Law.

The Commission has established separate bookkeeping records and accounts for funds

⁴ Then known as Iowa Court Rule 121.

received to finance the disciplinary system. A Disciplinary Fund checking account has been established for disciplinary operations. The required annual fees received from attorneys to finance the disciplinary system are deposited in the Investment Account of the Client Security Commission, where they earn interest pending transfer to the Disciplinary Fund checking account. Funds deposited to the Disciplinary Fund checking account are diverted to interest bearing certificates of deposit to the extent not necessary to support current operations of the entities supported by the disciplinary fee.

AUDIT

Brooks Lodden, P.C., Certified Public Accountants, audited the Client Security Fund. The report of the accounts for the accounting periods ending November 30, 2005, November 30, 2006, and November 30, 2007 previously have been submitted to the Court. During these reporting periods, the Commission has used a fiscal year ending November 30 for accounting and budget purposes. In reviewing the audit recap of revenues, it is noted that reimbursements were recovered on prior claims paid by the fund in the amount of \$1,500.00 during 2005, \$ 100.00 during 2006 and \$ 1,225.00 during 2007. The Commission intends to continue its policy of seeking reimbursement of paid claims when circumstances warrant. The Commission continues to adhere to its longstanding investment philosophy of safety. The Commission's policy is to invest only in United States government or United States government-related securities or fully FDIC insured brokered certificates of deposit. Investments purchased are held until maturity.

OPERATIONS

Commission funds are deposited in accounts at Wells Fargo Bank, Des Moines, Iowa. All checks drawn upon the investment checking account require the signature of two commissioners. The operating funds are deposited in a separate checking account with a maximum of one-half of the monthly operating budget being transferred into the account at any one time. The Director of

the Office of Professional Regulation is authorized to sign checks from that account up to a maximum of \$2,000.00, with checks over \$2,000.00 requiring the signature of a Commissioner or the State Court Administrator also. There is a \$200,000.00 dishonesty insurance policy covering the Director, all employees of the Commission and all Commissioners.

In December of 2007, the Court approved a rule change such that the accounting and budget year of the Commission now will be same as state government generally. Based on that change, the Commission submitted and the Court approved the following Commission operating budget for the transition year December 1, 2007 through June 30, 2008:

CLIENT SECURITY COMMISSION TRANSITION YEAR 2008 BUDGET

| | |
|---|---------------|
| Salary and Salary Expenses | |
| Director | \$ 19,630.60 |
| Assistant Director | 13,699.20 |
| Auditors | 42,700.00 |
| Clerical – Bookkeeping | 21,087.44 |
| Employee Insurance | 7,166.37 |
| FICA | 7,429.47 |
| IPERS | 5,875.59 |
| Travel Expenses | |
| Staff and Commissioners | 700.00 |
| Auditors | 14,000.00 |
| Rent | 6,300.00 |
| Auditing Expenses | 4,300.00 |
| Telephone | 850.00 |
| Office Supplies | 800.00 |
| Printing | 1,200.00 |
| Postage | 1,800.00 |
| Repairs and Maintenance | 150.00 |
| Employer's Insurance | 1,500.00 |
| Unemployment Insurance | 160.00 |
| Miscellaneous | 2,000.00 |
| Automation Support | 900.00 |
| Internet App. Maintenance & Development | 2,000.00 |
| Internet Payment Charges | 860.00 |
| Total Operating Expenses | \$ 156,008.67 |
| Capital Expenditures | 300.00 |
| Total Projected Expenditures | \$ 156,308.67 |

COMPLIANCE REVIEWS

During the years encompassed by this report, auditors employed by the Client Security Commission conducted trust account compliance examinations as shown in the following table. During those same years, the auditors reviewed accounts in which lawyers were serving as fiduciaries as shown in the table.

| | <u>2005</u> | Year <u>2006</u> | <u>2007</u> |
|--|-------------|---------------------|-------------|
| Trust Account Compliance Examinations | 669 | 658 | 434 |
| Number of Lawyers Subject to Compliance Examinations | 946 | 948 | 923 |
| Fiduciary Account Examinations | 384 | 400 | 407 |

This level of audit activity continues the trend in increased trust account audits that began during fiscal year 2004. The examinations are designed to make certain that trust accounts and fiduciary accounts of lawyers are properly maintained and used in accordance with the requirements of chapter 45 of the Iowa Court Rules.

By order dated January 15, 1980, the Court authorized verification of the attorney's answers on the annual questionnaire during the trust account compliance examination. Additionally, the Court authorized inquiry regarding the status of any probate matters delinquent for more than sixty days after notice. The auditors do check the status of delinquent probate matters and request the cooperation of the lawyer involved in clearing up any delinquencies. Generally, lawyers are cooperative in curing any delinquency.

The Commission's audit staff has visited the offices of almost all lawyers in active practice in the State of Iowa and examined their trust accounts. The Commission's goal is to examine each trust account every three to four years. The fact that an examination is made does not indicate any violations are suspected on the part of the lawyer or lawyers involved. Cooperation

by members of the Iowa Bar continues to be excellent. The Commission's staff has published an outline on trust account procedures and made it available to all Iowa lawyers on the Commission web page. In addition, the Director of the Office of Professional Regulation periodically appears at continuing legal education events to discuss proper trust accounting procedures.

The majority of Iowa lawyers properly use their trust accounts. Commission auditors and staff often receive questions on trust accounting, and auditors and staff are happy to share their knowledge and experience to assist any lawyers who have such questions. Iowa was the first state to make periodic examinations of lawyers' trust accounts and continues to be the leader in that field. It is the Commission's belief that routine examinations of lawyers' trust accounts help deter that small number of lawyers who might otherwise make use of the funds of others. The Commission also believes that periodic audits help reduce the losses resulting from attorney diversion of client monies, through early detection. Commission members and staff also believe that the record revealed by this report continues to prove the wisdom of establishing the Client Security Trust Fund and the benefits of its continued operation.

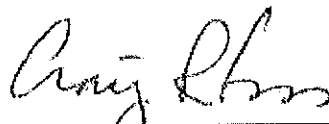
Dated: February 27, 2008.

Respectfully submitted,

CLIENT SECURITY COMMISSION OF
THE SUPREME COURT OF IOWA

The Honorable John D. Lloyd (12-31-2005)
The Honorable Martha L. Mertz-LaFollette
Craig R. Foss
Sondra Holmstrom
Timothy Lynch
Joel T. Niebaum (12-31-2007)
Jamie Ward
Mary A. Weideman

By



Craig R. Foss, Chairperson